

Appendix Exhibit 36

Conley v. County of Erie, et al.

Richard Schenker

Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ABBY B. CONLEY,	:	
Plaintiff	:	
	:	
v.	:	Civil Action No. 05-76E
	:	
COUNTY OF ERIE, ERIE COUNTY	:	
OFFICE OF CHILDREN AND YOUTH,	:	
a/k/a ERIE COUNTY CHILD	:	
WELFARE SERVICE, RICHARD	:	
SCHENKER, individually and	:	
in his capacity as County	:	
Executive of Erie County,	:	
Pennsylvania, PETER CALLAN,	:	
individually and in his	:	
capacity as Erie County	:	
Director of Personnel, DEBRA	:	
LIEBEL, individually and in	:	
her capacity as Executive	:	
Director, Erie County Office	:	
of Children and Youth, a/k/a	:	
Erie County Child Welfare	:	
Service, and JOHN A. ONORATO,	:	
ESQUIRE, individually and in	:	
his capacity as Erie County	:	
Solicitor,	:	
Defendants	:	

Deposition of RICHARD SCHENKER, taken before and
by Carol A. Holdnack, Notary Public in and for the
Commonwealth of Pennsylvania, on Friday, April
7, 2006, commencing at 1:50 p.m., at the offices
of Timothy D. McNair, Esquire, 821 State Street,
Erie, Pennsylvania 16501.

Reported by Carol A. Holdnack, RPR
Ferguson & Holdnack Reporting, Inc.

Page 2

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1 RICHARD SCHENKER, first having
 2 been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. McNAIR:

Q. Mr. Schenker, I'm Tim McNair. We've met before.

A. Yes.

Q. And, as you know, I'm an attorney. I'm
 representing Abby Conley in a case she filed against the
 County of Erie arising out of her termination which occurred
 while you were serving as County Executive.

And we've asked you to come here today so we can
 ask you a few questions about the case and find out what you
 know about it, and develop the case for -- you know, prepare
 for trial.

So I'm going to be asking you a number of
 questions. And I just ask that you would agree that if you
 don't understand my question or if it's not clear,
 ambiguous, or whatever, that you would stop me at that time,
 ask me to repeat, rephrase or clarify the question. I'll be
 glad to do that. If you don't do that, then we'll have to
 assume that you understood the question and that you
 answered it the way you intended to. Is that agreeable with
 you?

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1 A. Um-hum.
 2 Q. Would you please state your full name.
 3 A. It's Richard Robert Schenker.
 4 Q. Okay. Where do you reside?
 5 A. At 5531 Gardner Drive in Millcreek.
 6 Q. Are you currently employed?
 7 A. I am self-employed.
 8 Q. In what kind of business?
 9 A. I'm a consultant.
 10 Q. All right. Prior to that, what employment were
 11 you engaged in?
 12 A. I was the County Executive.
 13 Q. Okay. When were you the County Executive?
 14 A. From January of 2002 until January of 2006.
 15 Q. Could you -- well, let me just back up here. I
 16 want to ask you a little bit about your educational
 17 background. Where did you go to high school?
 18 A. I went to McDowell, 1975 graduate.
 19 Q. And what education did you have after that?
 20 A. I attended Penn State-Behrend for a little while
 21 with some education in various liberal arts, political
 22 science, communications. I finished my degree at Central
 23 Bible College in Springfield, Missouri. It's a theology
 24 degree. And did graduate work at Regent University.
 25 Q. Okay. Did you --

2 (Pages 2 to 5)

Page 6

1 A. Graduate work was in public policy.
 2 Q. Okay. Did you get a degree from --
 3 A. No, never finished the master's degree.
 4 Q. Okay. And I wanted to ask you a little bit about
 5 your employment background. Where did you work when you
 6 stopped going to school? Did you go to school continuously
 7 for that period of time or did you take some time off and do
 8 other things?
 9 A. Well, I was in and out of school. I mean, before
 10 I went to college, I owned Westlake Pizza Shop for a number
 11 of years. After college, I went to graduate school, took
 12 some time off, and went back to graduate school, you know,
 13 doing various work in some education, some political work.
 14 And then after I left graduate school, I went into some
 15 corporate work, corporate sales.
 16 Decided to, after I had been married -- married a
 17 girl from Erie. We were living in Virginia Beach. We
 18 decided to move back to Erie. Got involved back in
 19 political work with the Pennsylvania Christian Coalition.
 20 Went from there to PennDOT. And from there to a short, very
 21 short term at Allegheny Institute for Public Policy. And
 22 from there to run for County Executive and become County
 23 Executive.
 24 Q. Okay.
 25 A. I started a consulting company probably somewhere

Page 7

1 within that time frame, you know, that PennDOT/Allegheny
 2 Institute time frame.
 3 Q. What was your position with the Christian
 4 Coalition?
 5 A. Executive director for Pennsylvania.
 6 Q. How long were you in that job?
 7 A. From 1992 until 1996.
 8 Q. And then you went to PennDOT?
 9 A. Um-hum.
 10 Q. What was your job at PennDOT?
 11 A. I was the community relations coordinator.
 12 Q. And, here, I always thought you were the
 13 spokesman.
 14 A. Yes, it's the same thing.
 15 Q. You were the guy that goes on TV and explains why
 16 the roads are torn up.
 17 A. The technical word was community relations
 18 coordinator.
 19 Q. And what's the Allegheny Institute for Public
 20 Policy?
 21 A. It's a think tank dealing with state and local
 22 public policy.
 23 Q. Where is that located?
 24 A. In Pittsburgh.
 25 Q. Did you live in Pittsburgh at that time?

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1 A. No, I lived up here. Did most of my work up here.
 2 Traveled down there as I was needed.
 3 Q. All right. And what type of consulting are you
 4 engaged in now?
 5 A. Dealing with government contracts. Procurement of
 6 grants, things like that.
 7 Q. Now, what generally are the duties of the County
 8 Executive?
 9 A. The County Executive is the chief administrator of
 10 the County. The entire budget and various departments
 11 report -- the County Executive is responsible for making the
 12 overall budget and presenting it to Council. And also for
 13 the oversight of the personnel within various departments.
 14 And the development of -- what is it called -- initiatives
 15 that are new initiatives, that would have to be taken to
 16 County Council for approval.
 17 Q. Okay.
 18 A. Very vague. In general, but that's basically it.
 19 Q. When you were County Executive, did you have any
 20 direct role in personnel matters such as hiring and
 21 termination?
 22 A. Only at my top staff level. My director of
 23 finance, personnel administration, my attorney, my executive
 24 assistant or what was called the program director. And the
 25 director who became the director of economic development and

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1 planning.
 2 Q. Okay. And those were the positions that you had
 3 direct supervisory control over?
 4 A. Those were the ones I had report directly to me.
 5 Q. Okay. And those were all at-will positions?
 6 A. Um-hum.
 7 Q. Did you have routine involvement in personnel
 8 issues regarding the rank and file of the County workers and
 9 the bargaining unit employees?
 10 A. Direct involvement? Maybe you could define.
 11 Q. Well, on a regular basis were you consulted or --
 12 A. No.
 13 Q. -- did you give direction in day-to-day personnel
 14 decisions such as --
 15 A. No.
 16 Q. -- hiring, discipline, that type of thing?
 17 A. No. Perhaps at a department head level. Director
 18 of health, director of human services, warden.
 19 Q. You would have -- you would be involved in those
 20 decisions.
 21 A. Yes.
 22 Q. Okay. Did you participate directly in any union
 23 grievance proceedings?
 24 A. Never.
 25 Q. Did you participate directly in any civil service

3 (Pages 6 to 9)

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1 proceedings other than as a witness?
 2 A. Never, and never as a witness.
 3 Q. Okay. Do you know Abby Conley?
 4 A. I assume this is Abby Conley sitting next to you.
 5 Q. Yes. All right. Have you --
 6 A. This is the first time --
 7 Q. -- met her before?
 8 A. No.
 9 Q. Do you recall that Abby was employed by the Office
 10 of Children and Youth?
 11 A. Yes.
 12 Q. Did you have any contact with her during that
 13 time?
 14 A. No.
 15 Q. Did you ever have any contact with Abby or meet
 16 her in any political doings or events?
 17 A. Not that I'm aware of.
 18 Q. When is the first time that you heard of Abby
 19 Conley?
 20 A. The Sunday after her termination or resignation.
 21 Q. How did you learn about her?
 22 A. I read her name in the newspaper.
 23 Q. Were you involved in the decision-making process
 24 leading up to her termination?
 25 A. No.

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1 Q. Were you aware that there was a process under way?
 2 A. Yes.
 3 Q. To what extent were you aware?
 4 A. My staff asked for a meeting to inform me of an
 5 employee situation that they were going to deal with. And
 6 said that they thought that the employee who had violated a
 7 confidentiality issue was the same person who testified in a
 8 case, that it could be construed that her testimony in the
 9 case was the reason for any disciplinary action.
 10 And so they wanted to make me aware of it.
 11 Because they considered the events that go on at the
 12 County -- you know, events that would affect me from a
 13 political and public relations point of view. So they were
 14 making me aware of, you know, their process of evaluating
 15 e-mails and coming to a determination that there was a
 16 confidentiality violation.
 17 Q. Who was in this meeting?
 18 A. I believe it was John Onorato, Pete Callan, Debi
 19 Liebel. And that's all I can remember.
 20 Q. Okay. Was Mike Cauley involved?
 21 A. I don't remember.
 22 Q. And do you recall about when that meeting took
 23 place in relation to that Sunday that you saw the article in
 24 the paper?
 25 A. It was the week prior to the Sunday. I don't know

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1 which day.
 2 Q. Okay. The week immediately preceding?
 3 A. Right.
 4 Q. Would it have been Friday, or?
 5 A. It was more likely Wednesday or Thursday, but I
 6 don't recall.
 7 Q. Okay. Had you ever had a similar meeting
 8 regarding the termination of any other rank-and-file
 9 employee of the County?
 10 A. I don't recall meetings like this except that
 11 there was something at the beginning of my administration
 12 where a gentleman who was a campaign supporter of mine was
 13 being terminated for some kind of fraud or insurance -- what
 14 is it -- expense report violation. And I think in that
 15 case, because he was a gentleman who worked on my campaign
 16 committee, they wanted to inform me what they were doing.
 17 Q. Okay. All right. So that and this were the only
 18 two times that you were involved in a meeting --
 19 A. It's the only times I recall.
 20 Q. -- that you recall. Okay.
 21 A. At this point.
 22 Q. All right. Did you review any documents at this
 23 meeting?
 24 A. No, I did not. At least not from what I remember.
 25 Q. Okay. Was the term "whistleblower" brought up at

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1 that meeting?
 2 A. The term "whistleblower", I believe, was brought
 3 up at that meeting. In the context that it was thought that
 4 a newspaper reporter could construe that action taken
 5 against this employee was due to testimony in some court
 6 case. And so whether the word "whistleblower" was actually
 7 used or whether that was a -- you know, indicated with that
 8 type of terminology, I can't tell you for sure.
 9 Q. How long did that meeting last?
 10 A. Probably 15 minutes.
 11 Q. Who explained to you the overall situation?
 12 A. I think the majority of it was coming from John
 13 Onorato, and potentially some from Debi Liebel. But I would
 14 say probably the majority of it from John Onorato.
 15 Q. Was Mr. Callan conversant with the facts of the
 16 situation? As you recall.
 17 A. I think he may have said some things concerning
 18 the personnel code or something, but I don't recall him
 19 saying much.
 20 Q. Okay. Who brought up that a newspaper reporter
 21 would have an interest in this case?
 22 A. I believe John Onorato. He had actually offered
 23 me some transcripts from a case, and I declined.
 24 Q. Okay. Was that the hearing that was discussed --
 25 A. Yeah. Transcripts of --

4 (Pages 10 to 13)

Page 14

1 Q. -- that Abby testified at?
 2 A. Yes.
 3 Q. And you didn't look at them?
 4 A. No.
 5 Q. Did you do anything to independently review or
 6 investigate this situation?
 7 A. No.
 8 Q. And did you review the overall investigation that
 9 had been done?
 10 A. No.
 11 Q. Did you review a document prepared by Mike Cauley,
 12 which was a letter to John Onorato dated August 20th?
 13 A. I don't believe so. I could have, but I don't
 14 think so.
 15 Q. All right. So in your participation in this
 16 process, would it be fair to say that you relied exclusively
 17 on the efforts of your subordinates?
 18 A. Yes.
 19 Q. Do you recall whether or not you and Mr. Onorato
 20 went up to the Times-News on Friday, September 10th, 2004?
 21 A. I know Mr. Onorato and I went to the Times-News.
 22 Whether that was the date right now, I don't know. I would
 23 have to look at the calendar and the newspaper articles and
 24 verify that time frame, but I assume that's correct.
 25 Q. What was your purpose in going up there?

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1 A. To inform the Times-News that there was going to
 2 be an action taken, and the action had nothing to do with a
 3 prior case that one of the reporters had sat in and taken
 4 information on.
 5 Q. Why would somebody think that?
 6 A. That was the purpose of the meeting that
 7 Mr. Onorato, Debi Liebel and Pete Callan at least, maybe
 8 Mike Cauley, I don't know, had with me. Was because they
 9 believed that any action against this employee could be
 10 construed as dealing with that case when, in fact, it had to
 11 do with a violation of confidentiality issue.
 12 And I suggested that maybe we should just go to
 13 the Times-News and tell them that. Now, we didn't
 14 necessarily tell them what the -- why an action would be
 15 taken against an employee. We said that there was a
 16 personnel -- we had to be confidential about that because it
 17 was a personnel matter.
 18 Q. Okay. So you didn't say why it was, but you did
 19 say it was not because of Abby's testimony at a hearing.
 20 A. Yes. I believe we said -- we said it had nothing
 21 to do with a previous case.
 22 Q. Okay. How were you aware that a reporter sat in
 23 on the case?
 24 A. In the meeting that I had with those folks that
 25 you alluded to, it -- they brought that up and offered me

Page 16

1 copies of a transcript.
 2 Q. Okay. So the fact that a reporter was present at
 3 a hearing was brought to your attention in this meeting that
 4 we talked about.
 5 A. Um-hum.
 6 Q. The week that the termination occurred.
 7 A. Um-hum.
 8 Q. What was the concern about the reporter being
 9 present at the trial?
 10 A. That an --
 11 Q. Or at the County.
 12 A. -- action against the employee might be construed
 13 as related to that rather than the issue that they were
 14 dealing with.
 15 Q. Okay. Did anyone express a belief that Ms. Conley
 16 had something to do with the reporter being at that hearing?
 17 A. I don't believe so.
 18 Q. Did something happen at the hearing that was
 19 problematic for the agency?
 20 A. I don't know the case.
 21 Q. Okay. You don't know what happened at the
 22 hearing, just that there was a hearing?
 23 A. Yes. That's all I know, is that there was a -- I
 24 don't remember what that case was.
 25 Q. When you went to the Times, who did you speak to?

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1 A. Pat Howard and Rick Sayers.
 2 Q. Did you speak to Mr. Palattella?
 3 A. No.
 4 Q. Who is Rick Sayers?
 5 A. He's an editor in chief.
 6 Q. Okay. All right. Did you tell them that
 7 Mr. Palattella was interested in this story, or that he had
 8 been at that hearing?
 9 A. I believe maybe -- we told them that there was a
 10 reporter at the story (sic). Whether we mentioned it was Ed
 11 Palattella or not, I don't know.
 12 Q. Did you know it was Ed Palattella?
 13 A. I don't know if I knew then. Maybe.
 14 (Schenker Deposition Exhibit 1 marked for
 15 identification.)
 16 Q. Mr. Schenker, I'm handing you what's been marked
 17 as Exhibit 1.
 18 A. Um-hum.
 19 Q. Which is a reprint of an article from the Sunday,
 20 September 12th, 2004 issue of the Times-News. Is that the
 21 article that you referred to at the beginning of your
 22 testimony?
 23 A. The Sunday article when I saw Abby Conley's name
 24 for the first time, yes.
 25 Q. Have you reviewed this article recently?

5 (Pages 14 to 17)

Page 18

1 A. No.

2 Q. Okay. At the time you read it, did you believe
3 that the article accurately represented the facts?

4 MR. LANZILLO: Objection. Overly broad -- which
5 facts?

6 MR. McNAIR: The facts set forth in the article.

7 MR. JOYAL: Well, which facts are you talking
8 about? That he arranged for her --

9 Q. Do you need some glasses?

10 A. Oh, yeah. That would be helpful.

11 MR. LANZILLO: I'm just going to -- to the extent
12 that you answer that question, I would certainly
13 encourage you to read the article in its entirety
14 and address each paragraph.

15 MR. JOYAL: Each paragraph.

16 A. Okay.

17 Q. Yeah, I would concur with that. Would you mind
18 taking a look at that.

19 A. Let me start with the headline. The headline is
20 what bothered me. I did not think that was accurate. I
21 thought it was unfair. And I also believed that the
22 Times-News had done a disservice to the community.

23 I told the editors in my meeting with them that --
24 and I don't know who mentioned the word "whistleblower"
25 first. But I said this administration encourages

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1 whistleblowers, and we do not want to do anything to
2 discourage whistleblowers. So if, in fact, you know,
3 that -- actually, I think that's all I said about that.

4 Q. Okay. Were you disappointed that that sentiment
5 wasn't set forth in the article, or was it?

6 A. As far as I know, it was not.

7 MR. JOYAL: Rick, read the whole article.

8 THE WITNESS: Okay.

9 MR. JOYAL: Don't talk about it until you read it.
10 (Witness reviews document.)

11 A. Well, I would like to, before I read the whole
12 thing, just comment on this first part of it. I believe the
13 Times-News did not accurately display, you know, an action
14 against an employee that was, you know, in a bureau, under a
15 department, under a director of administration, you know,
16 and their situation. I believe it made it look like, you
17 know, this was Rick Schenker's decision and, you know, he
18 was -- you know, he planned to terminate. And I had -- you
19 know, this is not something that I did in my administration.

20 So do I believe it's accurate; no.

21 Q. Okay.

22 A. But it's the typical way the Times-News publishes
23 things. You know, many times they'll say it in different
24 ways, like the Schenker administration, you know. And then
25 who can argue with that.

Page 20

1 Q. All right. Well, they're attributing that
2 statement to Mr. Onorato.

3 A. I understand. But I'm just telling you that
4 that's the way they depict it. The stuff concerning Judge
5 Kelly and so forth, I had no knowledge of. And most of this
6 has to do with that. And, again, I have -- I didn't make a
7 determination -- let's see. Yeah, I think -- could you
8 repeat your initial question? Do I agree?

9 Q. Well, I guess the question was probably poorly
10 worded.

11 A. Okay.

12 Q. Let me just go through a couple of points, and
13 we'll see if we can do it that way. I think Mr. Lanzillo
14 had the better idea.

15 The fifth paragraph there on the first page, it
16 began, "Schenker and Onorato, however, did tell the Erie
17 Times-News that Schenker was not letting Conley go because
18 she was a whistleblower or because she testified against
19 OCY". Is that factually accurate?

20 A. I would say that is a -- I would say they
21 construed that based on what I said.

22 Q. Okay. That's not a direct quote?

23 A. No.

24 Q. And that's -- is that -- that's put together from
25 various different things that you said.

Page 21

1 A. I would say.

2 Q. Do you know whether Mr. Onorato made the comments
3 that are attributed to him in the next paragraph?

4 A. No, I do not.

5 Q. Did you ever talk to him about that?

6 A. No. In case you need those (indicating).

7 Q. Yeah, I probably will before it's all said and
8 done. I'm done with the -- were you ever informed that the
9 Office of Children and Youth had requested the permission of
10 your administration to read all of Ms. Conley's e-mails back
11 to the beginning of the year?

12 MR. LANZILLO: Objection to form. You can answer.

13 A. No, I was not informed. I think I was told in the
14 meeting that they had done an investigation including
15 e-mails.

16 Q. Okay. Nobody told you ahead of time or sought
17 your approval --

18 A. No.

19 Q. -- for that?

20 A. No, they would not have done that.

21 Q. Did you make any review of Abby's personnel file
22 in this meeting?

23 A. Never.

24 Q. Did you -- you never reviewed her performance
25 evaluations, then?

6 (Pages 18 to 21)

Page 22

1 A. Never.

2 Q. Was there any discussion of her personnel file or
3 her past performance in her 13 years of employment?

4 A. No.

5 Q. In this meeting was there any consideration given
6 to any sanction other than terminating her employment?

7 A. I don't know. I only remember listening to them,
8 being more concerned about my administration and it seemed
9 political future. And I told them what I tell everybody, is
10 do the right thing.

11 Q. So you don't recall that there was any discussion
12 of perhaps some lesser sanction or --

13 A. I don't recall.

14 Q. Okay.

15 A. I don't believe so, but I don't recall.

16 Q. Did you participate in any other personnel actions
17 at the Office of Children and Youth --

18 MR. LANZILLO: Objection to form.

19 Q. -- in 2004?

20 MR. McNAIR: What's the matter with that?

21 MR. LANZILLO: It assumes that he participated in
22 a personnel action. I think he's testified that
23 it was an information meeting. He was advised
24 concerning actions to be taken out of concern out
25 of political impact. So the other is

Page 23

1 objectionable.

2 Q. Did you approve the action that was proposed by
3 the people in that meeting?

4 A. My only comment was, just do the right thing.

5 Q. Okay. So you made no determination as to whether
6 or not what they were going to do was the right thing or
7 not?

8 A. No. That was entirely up to them.

9 Q. Were you involved in any -- well, I guess I'll
10 have to say any other personnel actions that were taken
11 regarding OCY employees after that?

12 MR. LANZILLO: Same objection.

13 MR. McNAIR: I think we can agree it was a
14 personnel action here.

15 MR. LANZILLO: I understand -- and I understand
16 your --

17 MR. McNAIR: It's a little ambiguous. I don't
18 know how --

19 MR. LANZILLO: It could be construed as
20 objectionable or nonobjectionable, so I put a
21 precautionary objection on the record.

22 MR. McNAIR: I'm not asking him to admit.

23 MR. LANZILLO: I got you.

24 A. I only asked for investigations of issues relating
25 to Brittany Legler and another case where a child almost

Page 24

1 drowned in West County. And I asked for those
2 investigations so that they could make solid personnel
3 decisions. I asked for that from the director of human
4 services, not from the director of OCY, because I wanted to
5 get a higher-level view of those things.

6 Q. Okay.

7 A. The only other personnel decision that I made was
8 with the final selection of the new director of OCY.

9 Q. Mr. Lucht.

10 A. Yes.

11 Q. All right. Was there any investigation of
12 Ms. Liebel's -- I'll say stewardship of OCY during the time
13 that she was the director?

14 MR. JOYAL: Objection, relevance. You can answer.

15 A. Only that which was done either by the director of
16 human services concerning those issues of personnel
17 internally concerning those two young girls. I believe they
18 were both young girls; Brittany Legler and the other one out
19 in the West County.

20 Q. Okay.

21 A. And everything else was probably a -- it wasn't
22 personnel-related. It was, you know, the larger view of, do
23 we have the right people in positions. And I would
24 continuously ask my staff to review that.

25 Q. Okay. The director of human services at this time

Page 25

1 was who?

2 A. There were actually two. One was Steve Surovec,
3 and the second was Charlie Barber.

4 Q. And who was the director of Human Services at the
5 time Ms. Liebel left OCY?

6 A. Charlie Barber.

7 Q. Do you know whether or not he recommended to
8 Ms. Liebel that she find her life's work elsewhere, or?

9 MR. JOYAL: Objection, relevance.

10 Q. You don't know?

11 A. I don't know.

12 Q. Was there any discussion of Ms. Liebel's departure
13 with you prior to the event?

14 MR. JOYAL: Same objection.

15 MR. LANZILLO: You can answer.

16 A. The only one who discussed that with me was John
17 Onorato, who said that he had a talk with Ms. Liebel and
18 that she was going to resign. And she was going to retire,
19 I think he said.

20 Q. Right. I believe she said she retired.

21 A. Right.

22 Q. Do you know a County employee named PW?

23 A. I can only say the name sounds familiar. That's
24 all I can tell you.

25 Q. Do you know whether any complaints or issues

7 (Pages 22 to 25)

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1 relating to Ms. W were brought to your attention during your
2 administration?

3 A. Not that I recall.

4 Q. Was it your understanding that Mr. Onorato had the
5 actual transcripts of the hearing that was discussed in that
6 meeting?

7 A. I didn't have the understanding he had the
8 transcripts. I think I had the understanding that he could
9 get them.

10 Q. Okay. So he didn't put them in front of you at
11 that meeting?

12 A. No.

13 Q. Okay. Did your administration undertake any
14 investigation of the manner in which the personnel action
15 against Ms. Conley was carried out?

16 A. That would be a question for Mr. Callan. I do not
17 have the answer to that.

18 Q. Okay. Do you know whether or not anyone took a
19 look at it to see whether or not it was done in accordance
20 with appropriate procedures, or?

21 A. I do not know. I would have left that to
22 Mr. Callan.

23 Q. When did you first become aware that Ms. Conley
24 was claiming that -- actually making the claim that her
25 termination was motivated by her testimony at a hearing?

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1 A. I don't recall when I found that out. There had
2 to be some kind of public document or public issue, maybe
3 something concerning civil -- a civil service hearing,
4 perhaps, at that point.

5 MR. McNAIR: That's all the questions I have for
6 you right now.

7
8 CROSS-EXAMINATION

9 BY MR. JOYAL:

10
11 Q. Rick, I just have a couple questions. And I just
12 want to have you look at Exhibit No. 1.

13 A. Okay.

14 Q. You testified earlier that this was an
15 informational meeting to you. And that during the course of
16 this original informational meeting, you said that people
17 expressed some concerns that a reporter or the newspaper
18 might misconstrue or construe the termination of the
19 personnel action of this unnamed employee to be related to
20 her testimony at the trial.

21 A. Um-hum.

22 Q. Do you remember that?

23 A. Yes.

24 Q. What's the headline of that story say?

25 A. Whistleblower Ousted.

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1 Q. Was that not somewhat of a fulfilled prophecy,
2 based upon the meeting that you had earlier?

3 A. Yes.

4 Q. They were, indeed, prophetic that if the word of
5 this termination was given to the newspapers, it would be
6 construed by the newspapers or written by the newspapers as
7 something that it was not, that is, that a whistleblower had
8 been fired for giving testimony at a court hearing.

9 A. Correct.

10 Q. And this story that was printed out -- obviously,
11 it was off the Internet version. But, primarily, this is a
12 story about -- well, could one construe this as another
13 OCY-bashing story?

14 A. That's the way I would have construed it. And
15 with the sensational headlines that don't match the article.

16 Q. Well, they certainly don't match what you told
17 them allegedly.

18 A. Right.

19 Q. Do they match the reasons that you understood were
20 being given by OCY and, in effect, the County for her
21 requested termination?

22 MR. McNAIR: Objection, foundation.

23 Q. You can answer.

24 A. Well, they don't match the reason that we -- that
25 I was told there was going to be a termination based on a

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1 breach of confidentiality. Was that your question?

2 Q. Yes, that's my question. And let me ask this.
3 Presuming, for the purposes of the question, that the
4 termination took place in the afternoon of September 10th,
5 2004, did you authorize a press release or a phone call to
6 the newspapers to inform them that Ms. Conley had been
7 separated from her employment with the County?

8 A. A press release or a phone call?

9 Q. Yeah. Did you call -- did you authorize someone
10 to call the newspaper and say, we just fired Abby Conley?

11 A. No.

12 Q. Your comments to the two editors in paragraph --
13 which were attributed to you in Paragraph 4, which is,
14 "Schenker and his top legal adviser declined to comment on
15 the reasons behind the dismissal, saying County personnel
16 rules prohibit them from discussing the case in detail", as
17 something you did say, correct?

18 A. That's right. We said we could not discuss it
19 because it was a personnel issue.

20 Q. So the only people that -- and I would presume
21 that you would not have directed Pete Callan or Debi Liebel
22 or John Onorato to call the newspapers --

23 A. No.

24 Q. -- between September 9th and September -- I
25 presume the close of the time that the Erie Times goes to

8 (Pages 26 to 29)

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1 press on September 11th for its Sunday edition, to inform
2 them so that they could write this story?

3 A. No, I didn't direct.

4 Q. So, presumably, it came from someone associated
5 with Ms. Conley.

6 MR. McNAIR: Objection. Argumentative. Lack of
7 foundation.

8 Q. Would you believe that?

9 MR. McNAIR: Untrue.

10 A. You know, I couldn't say. I don't know. I guess.

11 Q. Well, let's go logically here. There was a
12 Saturday in between Friday and Sunday.

13 A. Um-hum. Obviously, they had talked to Ms. Conley.
14 They --

15 Q. I believe it says in the article she declined
16 comment.

17 A. Right.

18 Q. One doesn't know what she declined comment about
19 though; is that right?

20 A. Um-hum.

21 MR. JOYAL: I have no other questions.

22 REDIRECT EXAMINATION

23 BY MR. McNAIR:

24

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1 Q. As I read this article, you didn't state that
2 there was another reason, just that there -- that the reason
3 was not because Abby was a whistleblower; is that correct?

4 MR. LANZILLO: Objection to form.

5 A. I think that we said there was a reason, but we
6 couldn't talk about it.

7 Q. Okay. Now, when Mr. Joyal tells you that the
8 Times learned of Abby's termination from Abby or people
9 associated with her, you would agree with me that that's
10 mere speculation on your part.

11 MR. JOYAL: Well, I'm going to object to the
12 characterization. I didn't tell him anything. I
13 asked him a question.

14 A. I don't -- you know, all I know is what's written
15 in here. And it says they talked to her. And they refer to
16 the comment that John Onorato and I made. And I assume that
17 that was at their offices when we went there. So I don't
18 know --

19 Q. Okay. Well, Onorato's comment, obviously, was
20 after the termination, correct? He said Conley ultimately
21 resigned.

22 A. It must have been after, then.

23 Q. Okay. So it might have been Mr. Onorato that
24 called the newspaper to tell them that the deed was done.

25 A. It could very well be. Or they called him.

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1 MR. McNAIR: That's all I have.

2

3 RECROSS-EXAMINATION

4 BY MR. JOYAL:

5

6 Q. Let's just follow up here, logically speaking,
7 Rick. You go to the newspaper.

8 A. Um-hum.

9 Q. You tell them something so that there's no
10 misconstruction of what happened, on a Friday.

11 A. Um-hum.

12 Q. On a Sunday a story appears talking about what
13 happened with a headline talking about a whistleblower and
14 all sorts of quotes from a transcript of a trial.

15 A. Um-hum.

16 Q. Many of which talk about Abby Conley saying she
17 was afraid to lose her job.

18 A. Um-hum.

19 Q. Does logic indicate that John Onorato is going to
20 call the newspaper to say, in Mr. McNair's words, "the deed
21 is done"?

22 MR. McNAIR: Objection. Argumentative.

23 A. Knowing John Onorato, I don't believe that he made
24 a phone call to the newspaper. Was he -- now, again, and I
25 do want to mention this. I was talking to Rick Sayers and

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1 Pat Howard. This article is written by Ed Palattella. Ed
2 Palattella was not in the room. That's all I want to point
3 out.

4 Q. We understand that. And the County and OCY for a
5 number of years had the stuffings kicked out of it by Ed
6 Palattella in the Erie Times; is that right?

7 MR. McNAIR: Objection. Argumentative. Lack of
8 foundation. To the extent you make it sound like
9 it was unjustified.

10 MR. JOYAL: Well, I've read some of the stories,
11 Mr. McNair. I don't see two sides to many of
12 them.

13 A. Ed Palattella does do that, yes.

14 Q. Okay. Would the County, John Onorato, or anybody
15 associated with OCY and the County call Ed Palattella --

16 A. No.

17 Q. -- to have another story -- negative story written
18 about it?

19 A. I can't -- no, I can't imagine that happening.

20 MR. JOYAL: I don't have any questions.

21 MR. McNAIR: That's it.

22 MR. JOYAL: Rick, you have a right to read or
23 waive signature on the transcript. By and large,
24 your only role in reading and signing it would be
25 to correct typographical errors. I would suggest

9 (Pages 30 to 33)

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1 you waive.

2 THE WITNESS: I'll waive.

3
4 (Deposition concluded at 2:40 p.m.)
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10 (Page 34)

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Article published Sep 12, 2004

Whistleblower ousted

County aide had testified supervisor altered document in child-welfare case The disputed changes County backs supervisor

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By Ed Palattella
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At a court hearing in late July, an aide in the Erie County Office of Children and Youth testified that her supervisor altered a court document, a practice the aide called "not appropriate."

The aide is now out of a job.

Erie County Executive Rick Schenker on Friday arranged for the dismissal of the employee, Abby Conley, who had worked with troubled families for four years as an OCY social-service aide.

Schenker and his top legal adviser, county Solicitor John Onorato, declined to comment on the reasons behind the dismissal, saying county personnel rules prohibit them from discussing the case in detail.

Schenker and Onorato, however, did tell the Erie Times-News that Schenker was not letting Conley go because she was a "whistleblower" or because she testified against OCY.

Onorato said he and Schenker are comfortable with the decision. He said Conley ultimately resigned, though he acknowledged Schenker told the Erie Times-News that Schenker had planned to terminate Conley from her position.

Conley declined comment. She had worked for Erie County government for 13 years, including the four years with OCY. Conley is a former candidate for Erie City Council, and was vice chairwoman of the city of Erie's Human Relations Commission, which became the Erie County Human Relations Commission.

The court hearing at which Conley testified was July 28 before Erie County



Schenker #1

Judge Elizabeth Kelly. The hearing concerned the case of 2-year-old twin girls whom OCY had removed from their parents.

Conley, the aide on the case, was critical of her superior at OCY and provided testimony that was damaging to OCY's position. OCY came into court opposing reunification of the twins with their parents. Kelly ended up ruling against the agency.

Conley testified about the problems she had with OCY's handling of the case. At one point she said she was concerned about testifying, and she started to cry.

"What are you concerned about?" Kelly asked Conley, according to a transcript of the hearing.

"That I'm going to get into trouble," Conley replied.

"What kind of trouble?" Kelly said.

"I'm going to lose my job," Conley said.

"Why are you afraid of that?" Kelly said.

"Because some of the things they've done (are) not appropriate, and I don't want to lie," Conley said.

"You don't need to be afraid," Kelly replied. "And you are to never lie in this courtroom, and you are not going to lose your job based on anything that occurred in this courtroom today."

"OK," Conley said.

Conley also testified that, at that point, no one at OCY had threatened to fire her over what she might say in court. Without going into detail, Conley also said she had other professional difficulties with her superiors at OCY.

The dismissal of Conley and the events leading up to it come at a sensitive time for OCY, which investigates allegations of child abuse and neglect and places dependent children in foster homes or with adoptive parents.

The agency is the subject of an internal probe and a state investigation into its handling of the case of 15-year-old Brittany Legler, who died May 9 after collapsing at the home of her adoptive mother, Lisa M. Iarussi.

Iarussi is awaiting trial on the felonies of aggravated assault and endangering the

welfare of a child and the misdemeanor of recklessly endangering another person.

Police allege she caused more than 200 bruises and other injuries to Legler, whom she adopted in 2001.

According to the arrest warrant for Larussi and other information in the case, the Millcreek Township School District repeatedly complained of the suspected abuse to OCY, though the office did not forward the complaints to the police.

Conley was not involved in the Larussi case, and she did not mention that case during her testimony at the hearing about the twins.

The lawyer for the mother of the twins called Conley as a witness at that hearing. The mother and father asked to be reunited with the twins, while OCY, claiming suspected abuse, wanted to terminate the parents' rights and have the children put up for adoption.

The parents' lawyers argued the abuse claims lacked substantiation. The children were in foster care at the time of the hearing, though the parents had met with them in supervised visits.

As the aide on the case, Conley observed how the parents interacted with the children and wrote summaries for presentation in court. She testified that her supervisor on the case, Sue Deveney, altered Conley's evaluation of the mother to make it less favorable.

Reading from documents submitted as evidence, Conley said she originally wrote: "This social-service aide has no concerns or recommendations when it comes to parenting needs in the current or the future when it pertains to (the mother). She clearly excels in her parenting abilities."

Conley said Deveney changed that section to read: "(The mother) displays appropriate parenting skills during supervised visitations at the agency."

In another section of the summary, Conley testified, she wrote that the mother "does exceptionally well parenting and interacting with her children during visits. She is consistently involved with both her twin daughters and equally divides herself between the two of them."

Deveney, Conley testified, changed her summary by taking out the word "exceptionally."

Judge Kelly commented on the changes while Conley was on the witness stand. The differences in the summaries, Kelly said, "are very clear to me."

Conley went on to testify that she realized Deveney, as the supervisor on the case, had "the right to correct my court summaries." But Conley testified that professional disagreements with Deveney prompted her to ask to be taken off the twins' case and out of Deveney's unit. Conley said OCY granted those requests.

"I didn't share the opinion of my supervisor" on the twins' case, Conley testified. "And it was apparent that my opinion (and) professional involvement was different than her professional opinion."

Gerald Villella, the lawyer for the twins' mother, asked Conley if she had ever written negative reports about parents during her career at OCY. Conley said she had.

"Ever stopped from doing that?" Villella said.

"No, no," Conley testified.

"Ever been corrected by your supervisor for doing that?" Villella asked.

"My punctuation has always been corrected because I make mistakes," Conley said.

"No one ever told you couldn't render an opinion on that, did they?" Villella said.

"No," Conley replied.

After hearing Conley's testimony, as well as the testimony of the twins' parents, Kelly issued her ruling. In a setback to OCY's pursuit of termination of parental rights, Kelly ruled that the goal of the case is for the twins to be reunified with their parents, and that OCY "is directed to continue to work actively with these parents towards that goal.

"At this point in time we need to move cautiously to be sure that we ensure the best interests of these children," Kelly said.

Deveney, Conley's super-visor, did not testify at the hearing.

Onorato, the county solicitor, said he reviewed a transcript of the hearing, and said the county found no problems with how Deveney and other supervisors handled the case.

He said he disagreed with Conley's testimony about the alteration of the court summary.

"I am not aware that is what actually occurred," Onorato said.

He also said, "I am confident that after reviewing the transcript and checking into the matter that the Office of Children and Youth acted in a manner that is consistent with the policies and procedures of the office."

ED PALATTELLA, can be reached at 870-1813 or by e-mail.

Last changed: Sep 11, 2004

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